



**CITY OF HENDERSON**  
240 Water Street  
P.O. Box 95050  
Henderson, NV 89009

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July 18, 2011

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20037

**Re: Correction to City of Henderson Comments  
WC Docket No. 11-59**

Dear Ms. Dortch:

On behalf of the City of Henderson, the undersigned refiles the City's comments in response to the Commission's April 7, 2011 Notice of Inquiry in the referenced Docket. The comments are identical to what was filed earlier today, except that the signature block to the filing has been corrected.

Please contact the undersigned if you have any questions regarding this submission.

Respectfully submitted,

Mark Backus  
Assistant City Attorney  
City of Henderson, Nevada

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of	)	
	)	
Acceleration of Broadband Deployment	)	WC Docket No. 11-59
Expanding the Reach and Reducing the Cost of	)	
Broadband Deployment by Improving Policies	)	
Regarding Public Rights of Way and Wireless	)	
Facilities Siting	)	

**COMMENTS OF THE CITY OF HENDERSON, NEVADA**

The City of Henderson, Nevada (“Henderson” or “City”) files these comments in response to the Notice of Inquiry (“NOI”), released April 7, 2011, in the above-entitled proceeding. Through these comments, Henderson seeks to provide the Commission with basic information regarding its local right-of-way and facility management practices and charges.<sup>1</sup> The City believes the Commission should not interfere with local policies. Henderson has developed considerable experience applying its policies to protect and further public safety, economic development, and other community interests. By adopting rules in this area, the Commission could disrupt established, functioning processes at substantial cost to local taxpayers and to the local economy.

Henderson manages its right-of-way, and City-owned property, in a manner that accommodates the coordinated deployment of service providers’ facilities including broadband networks. Indeed, broadband service is available to the majority of households and businesses

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<sup>1</sup> The term “charges” is used herein to include both any cost recovery that is part of right-of-way and facility management (such as permitting fees), as well as other compensation received from communications companies for use of the rights-of-way and other facilities consistent with state and local law.

within the City. Henderson has permitted hundreds of wireless communication facilities within its jurisdictional boundaries. There is no evidence that our policies or charges with respect to the placement of facilities in the rights-of-way or on City property (such as City buildings and park areas) have discouraged broadband deployment. Our policies allow us to work with any private commercial entity intending to provide service. No company has cited our policies or procedures as a reason that it will not provide service. Our procedures articulate a defined scheduling path with milestones, intended to avoid delays in the development application process.

In response to the NOI, Henderson provides the following information:

**I. Application Procedures, Forms, and Substantive Requirements.**

The Commission asks whether all necessary application procedures, forms, substantive requirements, and charges are readily available.<sup>2</sup>

Henderson applies the following right-of-way management and facility siting procedures.

**A. Access to Public Rights-of-Way.**

(i) Use Agreements. Commercial entities seeking to access public rights of way to deploy facilities for public utility-related services (e.g., electric, gas, telecommunications) must first obtain a franchise or related use agreement with the City. These are negotiated agreements that operate to the benefit of both parties, and will include general construction and permitting requirements, bonding, insurance and indemnity requirements, and fee provisions. With regard to video programming such as cable service, the Nevada State Legislature enacted Assembly Bill 526 in 2007, which became Chapter 711 of the Nevada Revised Statutes (“NRS”). This law permitted any cable television service provider that

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<sup>2</sup> NOI ¶ 14.

had a current franchise agreement with a local government to terminate its franchise agreement and obtain a state-issued certificate of authority from the Secretary of State, to operate as a "video service provider" as defined in the statute. The statute also permits an existing cable service franchisee to keep its current franchise agreement for the initial term of the agreement.

(ii) Development Permits. Companies seeking to install specific facilities within public rights-of-way must also obtain a development permit under Title 19 of the City's Development Code, which can be found at the following URL link:

[http://www.cityofhenderson.com/community\\_development/dev\\_code\\_overview.php](http://www.cityofhenderson.com/community_development/dev_code_overview.php)

Wireless communications facility standards are identified in Section 19.5.4 of the Code. The development application process, including the form of the application, staff review procedures, public noticing, and planning commission/city council review and action, as well as a detailed timeline for each discrete component of the application process, is also available online at the following URL link:

[http://www.cityofhenderson.com/community\\_development/development\\_app\\_process.php](http://www.cityofhenderson.com/community_development/development_app_process.php)

B. Access to City-owned property.

(i) Agreement. An applicant seeking to attach facilities to City-owned property must obtain a lease agreement with the City. Applications are submitted to the City's property management department. The application process, including the application and bid package requirements, is available online at the following URL link:

[http://www.cityofhenderson.com/public\\_works/docs/forms/srw\\_pm\\_app.pdf](http://www.cityofhenderson.com/public_works/docs/forms/srw_pm_app.pdf)

(ii) Appraisal and Auction. Any lease of City-owned property is conducted in accordance with State law, specifically NRS 268.050 through 268.063. Before the City may lease any real property owned by the City to an applicant, State law requires that the City obtain two appraisals to determine the value of the property, solicit bids and comply with public noticing and other requirements in connection therewith.<sup>3</sup>

(iii) Development Permit. Applicants must also obtain a development permit under Title 19 of the City's Development Code, as noted in Section I(A)(ii).

## **II. Sources of Delays.**

The Commission asks what factors are chiefly responsible to the extent applications are not processed in a timely fashion.<sup>4</sup>

In Henderson, most applications are processed without undue delay. The development application process coordinates review and action by City staff, the City's planning commission which meets once a month, and the City Council which meets twice monthly. In the absence of any delays that may be occasioned by unresolved deficiencies in the application or missed deadlines by the applicant (or the applicant's subcontractor), final action on an application is normally completed within ten weeks.

As noted above, applicants seeking access to City-owned property have several additional steps which add time to the application process. All such applications are reviewed by the City's property management committee, which meets once every two months. State law requirements

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<sup>3</sup> NRS 268.048 et seq.

<sup>4</sup> NOI ¶ 14.

involving the disposition of municipal property, including public notice, appraisal and bid requirements for the lease of such property, may add up to an additional 180 days to the process.

### **III. Improvements.**

The Commission asks whether there are particular practices that can improve application processing.<sup>5</sup> Henderson incorporates a number of practices that have helped to streamline its process. As noted earlier, the development application and the procedures, required reviewing bodies and associated scheduling milestones, are available online at the City's website. The Henderson Municipal Code, which includes the City's development code and use standards, is also available from the City's website. Applicants are assigned a staff planner as a single point of contact at the City to assist with the application process, review the application and write a staff report for the proposed project. Minor modifications to facilities not involving height or profile changes, including most collocation projects, can frequently be accommodated by staff review and may not require planning commission review or city council action. Henderson, as a party to the *Regional Franchise Jurisdiction Interlocal Agreement* in Southern Nevada, cooperates with the surrounding communities of Las Vegas, North Las Vegas, Clark County and Boulder City to more efficiently and effectively serve their customers, by combining resources, sharing information, and otherwise coordinating individual franchise and related public rights-of-way activities.

### **IV. Permitting Charges.**

The Commission seeks data "on current permitting charges, including all recurring and non-recurring charges, as well as any application, administrative, or processing fees."

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<sup>5</sup> NOI ¶¶ 14, 29.

Specifically, the Commission asks commenters to identify:

- the type of facilities for which such charges are assessed;
- how such charges are structured (e.g., per foot or percent of revenue in the case of rights of way fees);
- whether the community is subject to comprehensive state franchising or rights-of way-laws;
- whether the charges are published in advance or individually negotiated, designed to approximate market rates or merely recover costs (direct and/or indirect), and accompanied by comprehensive terms, and conditions; and
- the value of any in-kind contributions required for access or permit approval.

The Commission further asks whether such charges are related to impacts on the local community, such as pavement restoration costs for projects that involve trenching in roadways.<sup>6</sup>

A. Rights-of-Way Use/Franchise Fees. Nevada state law allows local governments to receive compensation for rights-of-way use. Charges applicable to public utilities (including electric, gas, and telecommunications providers) are limited to five percent of the utility's gross revenue from customers located within the jurisdiction of the city; in the case of a public utility that sells or resells personal wireless services, fees are limited to five percent of its gross revenue from the first \$15 charged monthly for each line of access for each of its customers whose place of primary use is located within the jurisdiction of the city or county.<sup>7</sup> The City does not require in-kind contributions in connection with such access.

Attachments to City-owned streetlight poles are negotiated with providers on a consistent cost basis, adjusted annually by the percentage of change in the Annual

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<sup>6</sup> NOI ¶ 17.

<sup>7</sup> NRS 354.59883.

Average Consumer Price Index, All Urban Consumers. All such right of way use/franchise fees are described in the terms and conditions of individual, comprehensive use agreements with each user of the rights-of-way, and are remitted quarterly to the City.

While rights-of-way use and franchise fees received by the City are revenue-based within statutory limitations, such fees represent an important source of recovery for the City in connection with such use. Commercial entities' occupancy of the public rights-of-way involves significant costs to the City including road repair, reduction in the useful life of pavement due to trenching and boring, lost time and increased construction costs of other projects, diminished economic activity in construction areas, and disruption to other service facilities.

B. Lease Fees. Lease fees for City-owned real property are driven by the statutory appraisal and bid processes set forth in NRS Chapter 268.

C. Permitting Fees. The City publishes an application fee schedule for development and use permit applications on its website:

[http://www.cityofhenderson.com/community\\_development/fee\\_schedule.php](http://www.cityofhenderson.com/community_development/fee_schedule.php)

Fee amounts are aimed at a recovery of costs incurred by the City to process applications.

## **V. Local Policy Objectives.**

The Commission asks what “policy goals and other objectives” underlie the local practices and charges in this area.<sup>8</sup> Public rights-of-way use and wireless facility siting policy within the City is designed to encourage safe and efficient rights-of-way use by facilitating the responsible, coordinated deployment of facilities placed on public structures, and multiple

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<sup>8</sup> NOI ¶ 22.



service facilities that are permanently placed within the public rights-of-way. Policy considerations include ensuring public safety, and avoiding disruption of the primary transportation functions of such public assets. Protection of the public investment includes roadway repair and maintenance, minimizing accelerated deterioration to roads that accompanies street cuts, and preventing public disruption and damage to abutting property. Moreover, effective rights-of-way management policy in the City is not only limited to physical management but also the fiscal management of the rights-of-way, and fair and appropriate compensation for its use, not just a limited reimbursement of direct management costs.

## **VI. Possible Commission Actions.**

Finally, the Commission asks what actions the Commission might take in this area.<sup>9</sup> The City urges the Commission to refrain from further efforts aimed at extending federal regulation to local right-of-way management and facility placement processes. These processes involve location and use matters specific to the community and involving local engineering practices, local environmental and historical conditions, local traffic and economic development patterns, and other issues important to our community. These matters are managed by local staffs with considerable expertise developed over many years. The imposition of a federal regulatory regime that would restrict the authority of local government to manage and receive fair compensation for private use of public rights-of-way would likely create additional costs to our community, and have the potential to undermine important local policies and impact the availability of other public services. The Commission's efforts instead are better directed

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<sup>9</sup> NOI ¶ 36.

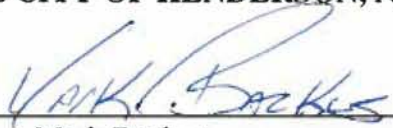
towards implementing its own recommendations in the National Broadband Plan for working cooperatively with state and local governments.

### **CONCLUSION**

The City of Henderson urges the Commission to conclude in this Docket that local government authority to allow the determination of policies over access to public rights-of-way, facility siting, and related charges does not operate to impede broadband deployment, and should be maintained. Henderson's access and usage policies and procedures are designed for the protection, management, and maintenance of the rights-of-way, and fair compensation for private use of that substantial public investment. Local governments such as Henderson are uniquely and singularly situated to protect community interests while accommodating service providers' access to the rights-of-way in a consistent and fair manner. There is no information to indicate that the City's policies and procedures in this regard have impaired any private commercial entity from providing broadband service within its jurisdictional limits.

Respectfully submitted,

**THE CITY OF HENDERSON, NEVADA**

  
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